

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

December 11, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Hawaii

Consent to Assignment and Update of Subleases and Assignment of Petroleum Supply Agreement for Harbor Lease No. H-83-2, from Kona Fuel & Marine, Inc., Assignor, to Kona Marine Holdings, LLC, Assignee, Honokohau Small Boat Harbor, Kealakehe, North Kona, Island of Hawaii, Tax Map Key (3) 7-4-08-040.

APPLICANT:

Kona Fuel & Marine, Inc., a Hawaii Corporation, Lessee to Harbor Lease No. H-83-2 by way of assignment of lease from Kona U-Cart, Inc., Honokohau Boat Harbor, Kealakehe, Kailua-Kona, Hawaii, 96740, has a pending assignment of Harbor Lease No. H-83-2 to Kona Marine Holdings, LLC, as Assignee, a Delaware limited liability company authorized to do business in Hawaii, whose business and mailing address is 111 East De La Guerra Street, Presidio Building, Santa Barbara, CA 93101, that was approved at the Land Board meeting of August 28, 2009, as Item J-2. Both seek Consent to Assignment and update of the current subleases held by Kona Fuel & Marine, Inc. The sublessees and agreement are as follows:

	<u>Name of Sublessee</u>	<u>Effective Date</u>	<u>Term Ends</u>
a.	Luana Limousine Service, Inc. a domestic profit corporation	June 1, 2009	November 30, 2010
b.	Kona Realty, Inc. a domestic profit corporation	August 1, 2004	Month-Month
c.	Hale Kipa, Inc. a domestic nonprofit corporation	July 1, 2006	Month-Month
d.	Kamanu Charters, Inc. a domestic profit corporation	August 1, 2004	Month-Month
e.	Kona Coast Skin Diver Limited,	October 8, 2002	October 7, 2012



Area: Containing approximately 955 square feet

- f. The Charter Desk, LLC:  
Location: Portion of first floor  
Area: Containing approximately 640 square feet.

TRUST LAND STATUS:

Section 5(B) lands of the Hawaii Admission Act  
OHA 20% entitlement:  
YES X NO   

LEASE CHARACTER OF USE:

The lease, relative to "use", reads: "... [F]or the construction of certain improvements which shall be used principally for a marine fueling facility and service station..."  
Prior references to the "marine related" character of subleases were previously addressed Exhibit "C" (October 22, 2004 Land Board submittal as Item J-2).

TERM OF MASTER LEASE:

Original term of 35 years, commencing on November 27, 1984 and expiring on November 26, 2019. On August 28, 2009, as Item J-2, the Board approved an extension of 20 years, commencing on November 27, 2019 and expiring on November 26, 2039. The next rental reopening is scheduled for November 27, 2009 and pending at this time.

SUBLEASE CHARACTER OF USE:

- a. Luana Limousine Service Inc.: "Tenant desires to lease space on the second floor of the premises for its Limousine & Taxi Service Business. ... The premises shall be used for the purpose of business offices and for no other purpose."
- b. Kona Realty, Inc.: "Tenant desires to lease space on the second floor of the premises for its Real Estate business. ... The premises shall be used for the purposes of business offices for its Marina Development and Salvage Business and for no other purpose."
- c. Hale Kipa, Inc.: "Tenant desires to lease space on the second floor of the premises for its general offices for its youth mentoring programs. ... The premises shall be used for the purposes as described above and for no other purpose."
- d. Kamanu Charters, Inc.: "Tenant desires to lease space on the second floor of the premises for its Charter boat business. ... The premises shall be used for the purposes of business offices, Charter bookings, and for no other purpose."

- e. Kona Coast Skin Diver, Ltd., Inc. "Tenant desires to lease space on the ground floor of the premises for its scuba diving, excursion and skin diving business. ... The premises shall be used for the purposes of scuba diving, instruction, excursions, tank fills and a skin diving business and for no other purpose."
- f. The Charter Desk, LLC: "Tenant desires to lease space on the first floor of the premises for its fishing charter business. ... The premises shall be used for the purposes of a charter desk and for no other purpose."

TERM OF SUBLEASE:

- a. Luana Limousine Service Inc.: "The term of Sublease shall be for the period June 1, 2009, through and including November 30, 2010, unless sooner terminated as provided herein, or unless renewed as provided herein."
- b. Kona Realty, Inc.: "The term of this Sublease shall be month to month commencing August 1, 2004, unless sooner terminated as provided herein, or unless renewed as provided herein."
- c. Hale Kipa, Inc.: "The term of this Sublease shall be for (3) years, Commencing July 1, 2006, unless sooner terminated as provided herein, or unless renewed as provided herein." (Currently month-month)
- d. Kamanu Charters, Inc.: "The term of this Lease shall be for the period August 1, 2004, through and including December 31, 2004, unless sooner terminated as provided herein, or unless renewed herein." (Currently month-month)
- e. Kona Coast Skin Diver, Ltd., Inc.: "The term of this Sublease shall be for a period of 60 months, commencing (per attached addendum) and terminating on the last day of the 60th month after commencement, unless renewed as provided herein." Gordon Crabtree of Kona Fuel & Marine stated that the commencement date was October 8, 2002, per the attached addendum, which states "This commencement date of the lease term will be the date Lessor delivers the premises to the Tenant." "Tenant shall have three options to extend the term of this Lease..." (Two five-year options and one 21-month option)
- f. The Charter Desk, LLC, : " The term of this Sublease shall be for the period September 1, 2006, through and including August 31, 2011, unless sooner terminated as provided herein, or unless renewed as provided herein."

ANNUAL RENTAL:

Currently \$12,750.00 per annum or 5% of the annual gross receipts, whichever is greater. At present the Kona Fuel & Marine, Inc. is in default, and as part the August 28, 2009

Land Board approval for the assignment, Kona Marine Holdings LLC, shall cure all unpaid rent prior to the delivery of the executed consent documents. Kona Marine Holdings LLC is prepared and ready to make payment.

ANNUAL SUBLEASE RENTAL:

The following rents are base rents exclusive of "payment of costs (common area maintenance)" and general excise tax.

- a. Luana Limousine Service, Inc.: "Base Rent...annual rent of SIX THOUSAND ONE HUNDRED FORTY SIX AND 40/100 (\$6,146.40) ..."
- b. Kona Realty, Inc.: "Base rent...in equal monthly installments of THREE HUNDRED SIXTY SIX AND 88/100 (\$366.88) ..." Equates to \$4,402.56 in annual rent.
- c. Hale Kipa, Inc.: "Base rent...in equal monthly installments of ONE THOUSAND FIVE HUNDRED TWELVE AND 20/100 DOLLARS (\$1,512.20) ..." Equates to \$18,146.40 annual rent.
- d. Kamanu Charters, Inc.: "Base rent...in equal monthly installments of SIX HUNDRED FIVE AND 50/100 (\$605.50)..." Equates to \$7,266.00 annual rent.
- e. Kona Coast Skin Diver, Ltd., Inc.: "tenant shall pay to lessor the sum of ONE THOUSAND SEVEN HUNDRED AND FIFTY-TWO AND 77/100 DOLLARS (\$1,752.77)...for the third, fourth and fifth lease years" "the base rental for the first 5 year option shall be 115.93% of the base rent paid for the premises...for the last month of the last year of the primary term..." Equates to \$24,383.88 annual rent.
- f. The Charter Desk, LLC, : "[C]ommencing on September 1, 2009, the Monthly Base rent shall be One Thousand Two Hundred Ninety-Two Dollars and Eighty Cents (\$1,292.80)..." Equates to \$15,513.60 annual rent.

DCCA VERIFICATION:

Kona Fuel and Marine, Inc. SUBLESSOR:

Place of business registration confirmed: YES X NO     
Registered business name confirmed: YES X NO     
Good standing confirmed: YES X NO   

Kona Marine Holdings, LLC SUBLESSOR:

Place of business registration confirmed: YES X NO     
Registered business name confirmed: YES X NO     
Good standing confirmed: YES X NO

DCCA VERIFICATION OF SUBLESSEE:

The place of business registration, registered business name, and good standing were confirmed with the DCCA for all indicated sublessees: Luana Limousine Service, Inc.; Kona Realty, Inc.; Hale Kipa, Inc.; Kamanu Charters, Inc.; Kona Coast Skin Diver, Limited (indicated as Kona Coast Skin Diver Ltd., Inc.); The Charter Desk LLC.

PETROLEUM SUPPLY AGREEMENT: ISLAND PETROLEUM, INC.

AGREEMENT CHARACTER OF USE:

"Island shall supply all of the fuel to be sold at [the] Honokohau Harbor Facility..."

TERMS OF AGREEMENT:

"The initial term of this Agreement shall be for ten (10) years from the date hereof. ISLAND is hereby granted the right to extend the Agreement for three additional periods....The third additional period shall be from the end of the second additional period until the end of the term of the Harbor Lease No. H-83-2 or until the end of any extension or renewal of the Lease....It being the intention of the parties that this Petroleum Supply Agreement continue throughout the entire term of the Lease and any extensions..."

SALES PRICES AND COMMISSIONS:

Island Petroleum, Inc.: "So long as the average margin from the sales of all fuel products remains at or above forty four (44) cents per gallon the commission payable to [Landlord] shall be twenty five (25) cents per gallon."

"If during any month the average margin exceeds forty six (46) cents, proceeds derived from the amount exceeding forty six (46) cents shall be divided equally between the [Landlord] and ISLAND."

DCCA VERIFICATION:

Island Petroleum, Inc.:

Place of business registration confirmed:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Registered business name confirmed:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Good standing confirmed:	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

REMARKS:

On August 28, 2009, under J-2, the Board approved the Consent to Assignment, Mortgage, and Amendment to Extend the Lease Term, for Harbor Lease No. H-83-2, from Kona Fuel & Marine, Inc., Assignor, to Kona Marine Holdings, LLC, Assignee.

To date with the assistance of Kona Marine Holdings, LLC, Kona Fuel & Marine Inc. (KFM) is in the process of repairing and upgrading the floating fuel dock, and is prepared to pay all back rent. Renovations shall start immediately upon receipt of executed consents, lease amendment of extension, and estoppel. It was explained within the August 28, 2009 submittal that over the course of time a fuel purchase agreement, and various sublease were entered into by KFM and were submitted in accordance with the terms of the lease.

The subletting provision provides:

"Subletting. That the LESSEE shall not rent or sublet the whole or any portion of the premises, without written approval of the Director. The Director shall have the right to deny uses contrary to the primary purpose of the lease, to review and approve the rent to be charged to the proposed sublessee and revise the rent and rent structure charged to the LESSEE by the LESSOR in light of the rental rate charged to the sublessee by the LESSEE; and to include such other terms and conditions prior to any approval by the Director; provided, further, that the rent may not be revised downward."

"The LESSOR shall expedite the obtaining of the approval of all marine related subleases from the Director of Transportation and the Department of Land and Natural Resources."

The Department of the Attorney General advised in April 2004 that KFM's lease may be read to allow "marine related" subleases. Prior references to the "marine related" character of subleases were previously addressed in the October 22, 2004 Land Board submittal under Item J-2, under the remarks section. Please reference EXHIBIT C. The subleases continue to operate under the same use, and all have received previous written consents at one point in the past under KFM. Kona Marine Holdings, LLC has expressed a desire to amend and update these subleases once its management is in place, and shall seek approval as to any amendments and updates of consents at that time as required.

To complete the necessary financing component, the applicant Kona Marine Holdings, LLC has requested the Chair approve and sign an estoppel certificate regarding Harbor Lease No. H-83-2, and include the subleases, assignment, and petroleum supply agreement. The proposed draft is attached as EXHIBIT D.

The Lease is currently in default in that the lease rents are in arrears in the sum of \$42,071.31. We are awaiting the 2009 percentage rent statement payment due December 31, 2009. This will confirm the full amount due. The Assignor, Assignee and the lender have agreed to cure all defaults under the Lease prior to or at closing of the transaction which involves an Assignment, Mortgage, and Extension of the Lease term.

The Division recommends the approval Consent to Assignment and Update of Subleases and Assignment of Petroleum Supply Agreement for Harbor Lease No. H-83-2, from Kona Fuel & Marine, Inc., Assignor, to Kona Marine Holdings, LLC, Assignee subject to review and approval of the Department of the Attorney General.

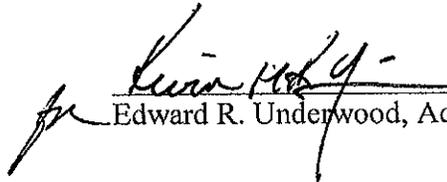
RECOMMENDATION:

Only after all defaults under the Lease are cured, then the Board Consents to:

1. the Assignment of the updated Subleases and Petroleum Supply Agreement regarding Harbor Lease No. H-83-2, from Kona Fuel & Marine, Inc., Assignor, to Kona Marine Holdings, LLC, Assignee;
  - a. Luana Limousine Service, Inc.
  - b. Kona Realty, Inc.
  - c. Hale Kipa, Inc.
  - d. Kamanu Charters, Inc.
  - e. Kona Coast Skin Diver Limited (as Kona Coast Skin Diver, Ltd.)
  - f. The Charter Desk, LLC
  - g. Island Petroleum, Inc. (for Petroleum Supply Agreement)
2. Authorize the Chairperson to execute Consent to the Assignments of Subleases and Petroleum Supply Agreement as updated, and to Kona Marine Holdings, LLC.
3. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
4. Subject to performance of all requirements of the August 28, 2009 Board approval;

5. Review and approval by the Department of the Attorney General; and
6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

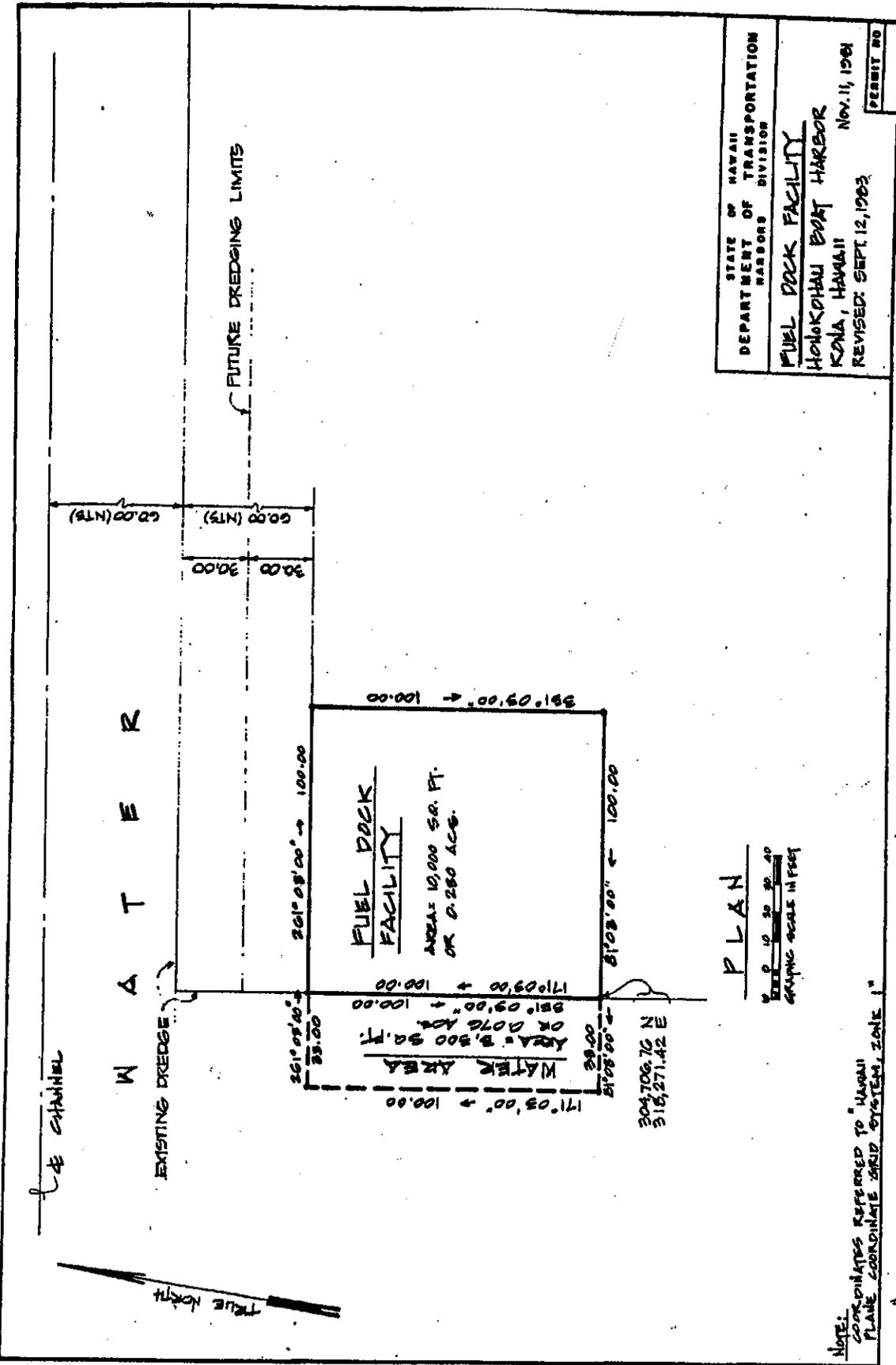
Respectfully Submitted,

  
\_\_\_\_\_  
Edward R. Underwood, Administrator

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielert, Chairperson





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

October 22, 2004

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Hawaii

Consent to Subleases, Harbor Lease No. H-83-2, Kona Fuel & Marine, Inc., a Hawaii corporation, Lessee, by way of assignment of lease from Kona U-Cart, Inc., to two sublessees, Honokohau Boat Harbor, Kealakehe, Kailua-Kona, Hawaii, Tax Map Key: (3) 7-04-008:40.

APPLICANT:

Kona Fuel & Marine, Inc., a Hawaii corporation, whose address is 74-381, Kealakehe Parkway, Suite E, Kailua-Kona, Hawaii 96740, Lessee, by way of assignment of lease from Kona U-Cart, Inc., as Sublessor, to the following Sublessees:

	<u>Name of Sublessee</u>	<u>Date of Sublease</u>
a.	Kamanu Charters, Inc.	August 1, 2004
b.	Hale Kipa, Inc.	October 1, 2004

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

LOCATION AND AREA:

The premises located at Honokohau Boat Harbor, Kona, Hawaii, together with an exclusive easement, both of which are more particularly described in attached Exhibit "A", TMK (3) 7-04-008:40. By Amendment of Harbor Lease H-83-2 dated November 10, 1983, the demised premises were relocated thirty (30) feet south of the previous location.

Fast land, containing an area of 10,000 square feet or 0.230 acre, and submerged land exclusive easement, situated in berthing area 3, adjacent to the western boundary of the fast land area, containing an area of 3,300 square feet or 0.076 acre, both as shown in

Item J-2

EXHIBIT C

SUBLEASE AREA:

- a. Kamanu Charters, Inc.: "... a portion of the premises described above commonly known as 'The Fuel Dock', which portion is designated on the sketches attached hereto as office 'E', (containing an area of approximately 346 square feet), on the second floor, hereinafter called the 'premises' ".
- b. Hale Kipa, Inc.: "... a portion of the premises described above commonly known as 'The Fuel Dock', which portion is designated on the sketches attached hereto as offices 'I' and 'J', (containing an area of approximately 524 square feet), on the second floor, hereinafter called the 'premises' ".

TRUST LAND STATUS:

OHA 20% entitlement:

YES X NO     

LEASE CHARACTER OF USE:

The lease, relative to "use", reads in its entirety:

"... [F]or the construction of certain improvements which shall be used principally for a marine fueling facility and service station which may include but not be limited to the following:

A. The LESSEE shall have the right to use the leased premises to sell, advertise for sale, or otherwise contract for sale all types of fuel, oil and lubricants normally used by small boats and to offer for sale or hire any and all goods and services reasonably necessary and incidental to the conduct by the LESSEE of such marine fueling facility.

B. The LESSEE shall be allowed to install vending machines for the purpose of selling soft drinks, cigarettes, candies, sandwiches and other similar items. In addition, the LESSEE shall be allowed to sell fishing gear, batteries, sparkplugs, packaged ice, packaged soft drinks, packaged beer and wine, and other fishing and boat equipment and supplies normally incidental to the operation of this type of

**Item J-2**

facility.

C. The categories of items allowed in the preceding paragraphs are not intended to be exclusive. However, any item not falling within the above categories shall be offered for hire or sale only with the prior approval of the LESSOR.

D. The LESSEE shall have the exclusive right to occupy and use the premises for proper fueling purposes during such period of the lease term as the LESSEE is not in default hereunder. The LESSOR shall revoke all tank truck fueling permits for Honokohau Boat Harbor immediately after receiving notice in writing from the LESSEE that it is ready and able to commence its fueling operations. No tank truck fueling permit shall be issued during the lease term. However, the Lessee's right to operate a marine fueling facility at the Honokohau Boat Harbor under the terms of this Lease is non-exclusive, the LESSOR reserving the right to continue existing facilities or to provide such additional or similar facilities as the interests of the public may require.

E. The use of the easement shall be for fueling and servicing of vessels only.

F. The LESSEE shall not use the premises, nor any portion thereof, nor permit any of the same to be used by any of its employees, officers, agents, invitees or guests, for any of the following purposes:

1. A restaurant or lunch counter operation.
2. Boat brokerage, or ship construction, repair or overhaul facilities.
3. Ship chandlery except to the extent permitted under paragraph B above.
4. To do any act which results or may result in the creation or commission or maintenance of a nuisance on said premises. The LESSEE shall also not cause or produce or permit to be caused or produced upon the premises, or to emanate therefrom, any unusually offensive sounds, or any noxious or objectionable smokes, gases, vapors, or

**Item J-2**

- odors.
5. For any illegal purpose.
  6. For permanently lodging or sleeping purposes.  
However, a rest area for employees for their comfort and convenience during working hours is allowed.
  7. The sale or service of any intoxicating beverage except to the extent permitted under paragraph B above."

**SUBLEASE CHARACTER OF USE:**

- a. Kamanu Charters, Inc.: Kamanu Charters' corporate purpose on file with the Department of Commerce and Consumer Affairs states "To own and operate a sail and snorkel charter business and to engage in such other related businesses as the corporation may from time to time determine." The sublease states "Tenant desires to lease space on the second floor of the premises for Charter Boat Business. ... The premises shall be used for the purposes of business offices, charter bookings, and for no other purpose."
- b. Hale Kipa, Inc.: Hale Kipa's corporate purpose on file with the Department of Commerce and Consumer Affairs states "Emergency shelter and other services for youths." The sublease document states, "Tenant desires to lease space on the second floor of the premises for its youth mentoring programs. ... The premises shall be used for the purposes as described above, and for no other purpose." See "Remarks" below for discussion on how Hale Kipa, Inc.'s character of use is marine related.

**TERM OF LEASE:**

Thirty-five (35) years, commencing on November 27, 1984 and expiring on November 26, 2019. Last rental reopening occurred in 1999; next rental reopening is scheduled for November 27, 2004.

**TERM OF SUBLEASE:**

- a. Kamanu Charters, Inc.: "The term of this Sublease shall be for the period August 1, 2004, through and including December 31, 2004, unless sooner terminated as provided herein, or unless renewed as provided herein. ... Tenant shall have the option to renew this Sublease for an additional term of six months (6) months as provided herein ... ."
- b. Hale Kipa, Inc.: "The term of this Sublease shall be for two years,

commencing October 1, 2004, unless sooner terminated as provided herein, or unless renewed as provided herein. ... Tenant shall have the option to renew this Sublease for an additional term of Two Years as provided herein ... ."

ANNUAL RENTAL:

Currently \$13,016 per annum or 5% of the annual gross receipts, whichever is greater. Adjusted gross receipts were \$443,882.67 for the reporting period January 1, 2003 to December 31, 2003. Total rent paid for this period was \$22,194.13. Kona Fuel & Marine, Inc. has submitted its rent payments due through September 30, 2004.

ANNUAL SUBLEASE RENTAL:

The following rents are base rents exclusive of "payment of costs (common area maintenance)" and general excise tax.

- a. Kamanu Charters, Inc.: "Tenant shall pay ... equal monthly installments of SIX HUNDRED FIVE AND 50/100 (\$605.50) each ..."
- b. Hale Kipa, Inc.: " Tenant shall pay ... equal monthly installments of EIGHT HUNDRED TWELVE 20/100 (\$812.20) each ... "

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

None. The sublease rent participation policy, approved by the Board on May 26, 2000, Item D-24, and amended January 26, 2001, Item D-8, is as follows:

The lessee is paying fair market rent and is only subleasing improvements that are not owned by the State pursuant to paragraph 1.c. of the policy. According to the policy, the "Board shall not receive any portion of sublease rents from subleasing improved space unless that right and method of calculation are specifically stated in the lease".

Kona Fuel & Marine, Inc. is proposing to sublease improved space. No method of calculation for sublease rent participation is stated in the lease. Therefore, there is no recommended adjustment to the lease rental.

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Good standing confirmed:	YES <u>X</u>	NO <u>__</u>

SUBLESSEE:

- a. Kamanu Charters, Inc.:  
Place of business registration confirmed: YES X NO \_\_  
Registered business name confirmed: YES X NO \_\_  
Good standing confirmed: YES X NO \_\_
- b. Hale Kipa, Inc.:  
Place of business registration confirmed: YES X NO \_\_  
Registered business name confirmed: YES X NO \_\_  
Good standing confirmed: YES X NO \_\_

REMARKS:

The subletting provision provides:

"Subletting. That the LESSEE shall not rent or sublet the whole or any portion of the premises, without written approval of the Director. The Director shall have the right to deny uses contrary to the primary purpose of the lease, to review and approve the rent to be charged to the proposed sublessee and revise the rent and rent structure charged to the LESSEE by the LESSOR in light of the rental rate charged to the sublessee by the LESSEE; and to include such other terms and conditions prior to any approval by the Director; provided, further, that the rent may not be revised downward."

"The LESSOR shall expedite the obtaining of the approval of all marine related subleases from the Director of Transportation and the Department of Land and Natural Resources."

The Board of Land and Natural Resources approved nine subleases of KFM to various sublessees at its meetings on June 4, 2004 and July 30, 2004.

The Department of the Attorney General advised in April 2004 that KFM's lease can be read to allow "marine related" subleases. The Division of Boating and Recreation believes that the Kamanu Charters, Inc. sublease character of use is clearly marine related and recommends approval of the sublease. The Hale Kipa, Inc. sublease was submitted to the Department of the Attorney General for review after its receipt in August 2004. That Department provided written confirmation that it had no objection to the sublease and stated that the issue of whether the sublease is marine related is properly a question for the Board of Land and Natural Resources.

By letter dated October 13, 2004, Hale Kipa, Inc.'s Program Coordinator Shelley Delfin provided the following justification for why Hale Kipa, Inc. should be considered marine related:

"The youth and families that will be serviced by the Hawaii Advocate Program are in the unique and hopeful position of having an Advocate to spend time showing them positive role models in the community. The Youth Advocates will be introducing their youth to various experiences through mentorship and modeling. With our office located at the Fuel Dock we will be able to show them how many community members make an honest, productive living through marine related professions."

"Many of these families do not have the culture or resources to plan for higher education. In our society that often translates to a feeling of inadequacy, inferiority and hopelessness. Observing the activities taking place at Honokohau will afford them the opportunity to see that they, too, can have a productive future here on our island by learning such trades as fishing, diving, sailing and crafts associated with marine life. They will see that they can play important roles in local industries that serve both local residents and tourists visiting our island."

"Business owners currently operating in and around the Honokohau Harbor have expressed interest in mentoring and guiding the youth of the Hawaii Advocate Program. We have spoken to the owners of Kamanu Charters, Southern Cross of Kona and Luana Limousines, co-tenants in the Fuel Dock building. They are all supportive of our program. Leaders from Habitat for Humanity Kona, the Rotary Club and the Kona Kohala Chamber of Commerce have offered to be involved in mentoring our youth. These business people agree that the youth we are mentoring are the future of Hawaii. They are interested in playing a role introducing our youth to the business opportunities available to them in the boating, fishing, diving and other tourist-related trades. Marine related occupations are vital to the future of Kailua-Kona."

Based on the above justification, the Division believes that the Board can consider Hale Kipa, Inc. as marine related and recommends approval of the sublease.

RECOMMENDATION:

That the Board consent to the two subject subleases under Harbor Lease No. H-83-2 between Kona Fuel & Marine, Inc., as Sublessor, and Sublessees:

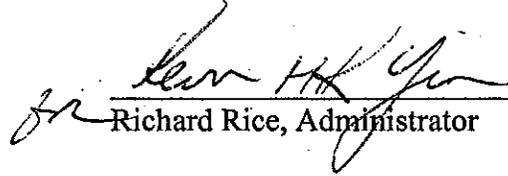
- a. Kamanu Charters, Inc.
- b. Hale Kipa, Inc.

Subject to the following terms and conditions:

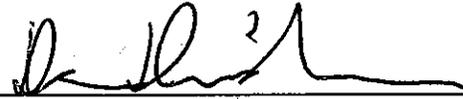
1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and

3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Richard Rice, Administrator

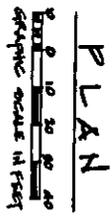
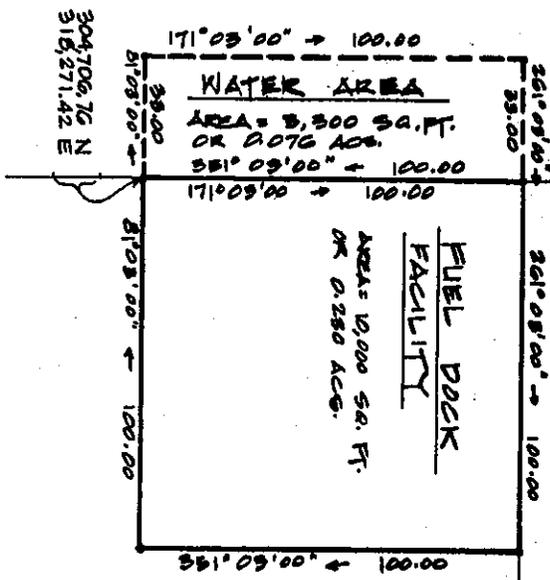
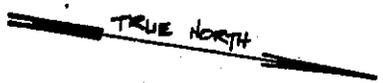
APPROVED FOR SUBMITTAL:

  
for \_\_\_\_\_  
Peter T. Young, Chairperson

WATER

EXISTING DREDGE

WATER

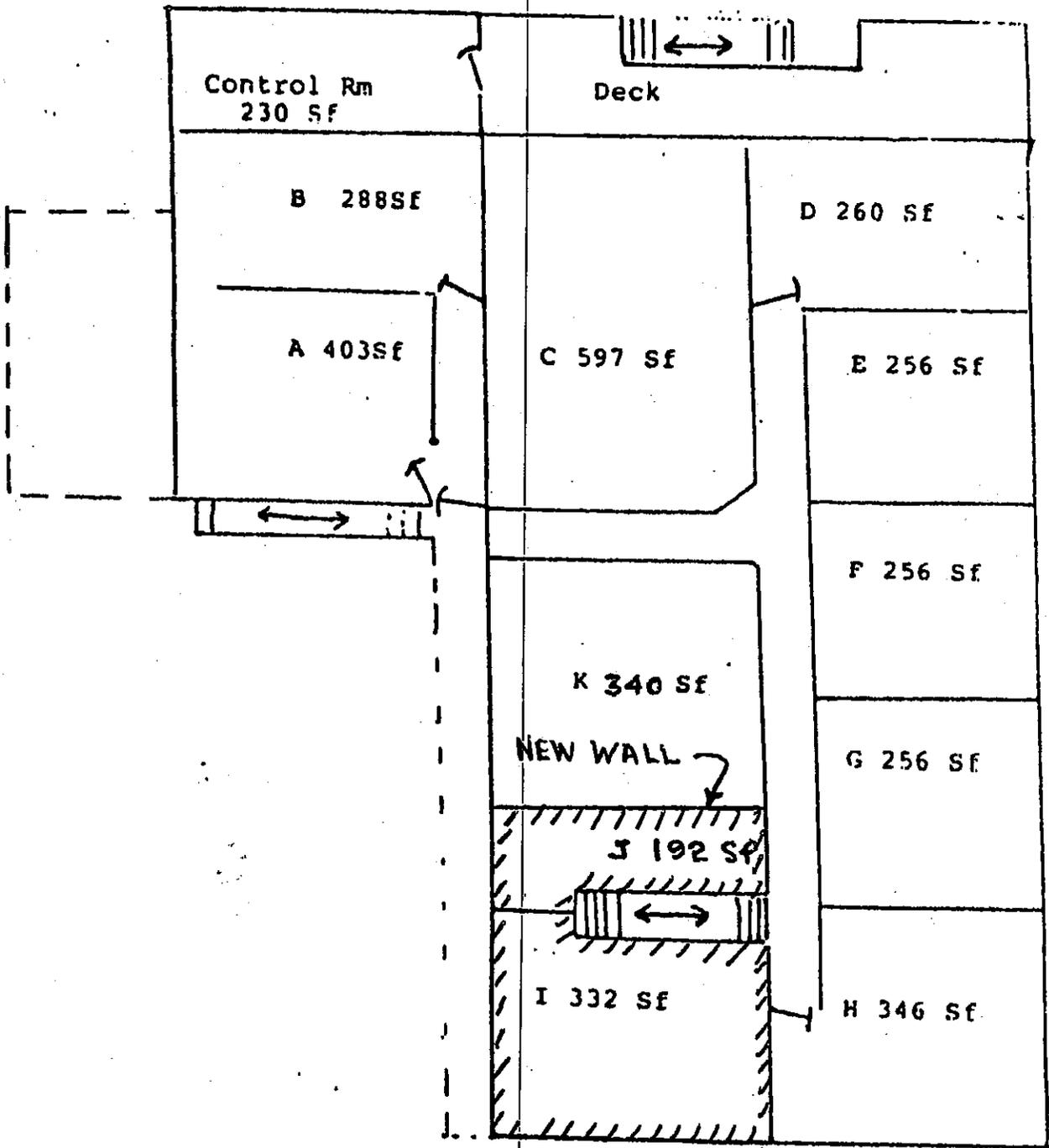


5  
 Note:  
 Coordinates referred to "HAWAII  
 PLATE COORDINATE GRID SYSTEM, ZONE 1"

30.00 30.00  
 60.00 (NTS) 60.00 (NTS)

FUTURE DREDGING LIMITS

STATE OF HAWAII  
 DEPARTMENT OF TRANSPORTATION  
 HARBOR DIVISION  
 FUEL DOCK FACILITY  
 HONOLULU BAY HARBOR  
 KONA, HAWAII  
 REVISED: SEPT 12, 1983  
 Nov. 11, 1984  
 PERMIT NO.



**DRAFT**

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL  OR PICKUP  :

CHUN RAIR & YOSHIMOTO LLP  
1000 BISHOP STREET, SUITE 1000  
HONOLULU, HAWAII 96813

TYPE OF DOCUMENT:

ESTOPPEL CERTIFICATE

(TOTAL PAGES: \_\_\_\_\_)

PARTIES TO DOCUMENT:

Lessor: STATE OF HAWAII, by its Board of Land and Natural Resources  
Mortgagee: FIRST STATE BANCSHARES, INC., SCOTTSBLUFF, NE,  
a Nebraska state banking corporation  
Assignee: KONA MARINE HOLDINGS, LLC, a Delaware limited liability company.

TAX MAP KEY FOR PROPERTY: (3) 7-4-008-040

ESTOPPEL CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS;

That the STATE OF HAWAII, by its Board of Land and Natural Resources (the "Lessor"), certifies to FIRST STATE BANCSHARES, INC., SCOTTSBLUFF, NE, a Nebraska state banking corporation (the "Mortgagee") whose address is 2002 Broadway, Scottsbluff, NE 69363, and to KONA MARINE HOLDINGS, LLC, a Delaware limited liability company authorized to do business in Hawaii, (the "Assignee") whose address is 111 East De La Guerra Street, Presidio Building, Santa Barbara, CA 93101, that to the best of Lessor's knowledge:

**EXHIBIT D**

(1) Lessor leased to Kona U-Cart, Inc., the premises described in that certain Harbor Lease No. H-83-2 dated July 19, 1983, recorded in the Bureau of Conveyances of the State of Hawaii (the "**Bureau**") in Book 18943, Page 357, as amended by unrecorded Amendment of Harbor Lease dated November 10, 1983, a copy of which is attached hereto as Exhibit A (as amended, the "**Lease**"), which Lease was assigned to KONA FUEL & MARINE, INC., a Hawaii corporation (the "**Lessee**") by Assignment dated December 28, 1994, recorded in the Bureau as Document No. 97-080406, consent thereto given by the State of Hawaii, by its Board of Land and Natural Resources by instrument recorded in the Bureau as Document No. 97-080407;

(2) The term of the Lease commenced on November 27, 1984, the basic annual rental under the Lease for the 5-year period commencing November 27, 2009 shall be \$ \_\_\_\_\_, and the Lease is in full force and effect and has not been modified, supplemented or amended other than as expressly acknowledged above;

(3) The subleases, including the Petroleum Supply Agreement, listed in the attached Exhibit B (the "**Subleases**") have been approved by the Lessor and the use of the premises as described in the Subleases comply with the requirements under the Lease;

(4) The manner in which percentage rent has been calculated under the Lease as set forth in the annual reports provided by Lessee to Lessor complies with the terms of the Lease (i.e., the amount by which five percent (5%) of the sum of the following exceeds basic rent: the retail sales of oil by the Lessee, rents paid to the Lessee by the subtenants under the Subleases (including common area expenses), and fuel commissions paid to the Lessee under Petroleum Supply Agreement minus gross excise tax collected);

(5) The Lessee is not in default in the payment of base rent, percentage rent or other charges under the Lease or in the performance or observance of any covenant or condition to be performed or observed by the lessee thereunder; and

(6) No event has occurred which authorizes, or with the lapse of time or notice or both will authorize, the Lessor to terminate the Lease.

[REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Chairperson of the Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

By \_\_\_\_\_  
Chairperson  
Board of Land and Natural Resources

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

Dated: \_\_\_\_\_

STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU ) SS.

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me personally appeared \_\_\_\_\_  
 personally known to me -OR-  proved to me on  
the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person  
executed the foregoing instrument as the free act and deed of such person, and if applicable in the  
capacities shown, having been duly authorized to execute such instrument in such capacities.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

(Official Stamp or Seal)

Doc. Date: _____	# Pages: _____
Notary Name: _____	_____ Circuit
Doc. Description: <u>Estoppel Certificate</u>	_____
_____	_____
Notary Signature _____	Date _____
NOTARY CERTIFICATION (at time of notarization)	

(Official Stamp or Seal)

**EXHIBIT A**

**Amendment of Harbor Lease No. H-83-2**

## **EXHIBIT B**

### **Tenant Leases**

1. Sublease between Kona Fuel and Marine, Inc. as "Lessor" and Luana Limousine Service, Inc. as "Tenant", effective June 1, 2009.
2. Sublease between Kona Fuel and Marine, Inc. as "Lessor" and Kona Realty, Inc. as "Tenant" effective August 1, 2004.
3. Sublease between Kona Fuel and Marine, Inc. as "Lessor" and Hale Kipa, Inc. as "Tenant" effective July 1, 2006.
4. Sublease between Kona Fuel and Marine, Inc. as "Lessor" and Kamanu Charters, Inc. as "Tenant" effective August 1, 2004.
5. Sublease between Kona Fuel and Marine, Inc. as "Lessor" and Kona Coast Skin Diver, Limited as "Tenant" (issued under Kona Coast Skin Diver, Ltd.) effective October 8, 2002.
6. Sublease between Kona Fuel and Marine, Inc. as "Lessor" and The Charter Desk, LLC as "Tenant" effective September 1, 2006.

### **Petroleum Supply Agreement**

Petroleum Supply Agreement dated November 15, 1994 with Island Petroleum, Inc.